

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

SAMUEL ELLISTON, )  
vs. )  
ILLINOIS CENTRAL RAILROAD )  
COMPANY, d/b/a CN/IC; AMERICAN )  
ELECTRIC POWER SERVICE )  
CORPORATION, d/b/a Cook Coal )  
Terminal; and TRACK TECH, INC., )  
Plaintiff, )  
Defendants. )  
CIVIL NO. 06-552-GPM

## ORDER

**MURPHY, Chief District Judge:**

In July 2006, Plaintiff filed this action against Illinois Central Railroad Company, d/b/a CN/IC; American Electric Power Service Corporation, d/b/a Cook Coal Terminal; and Trak Tech, Inc. Plaintiff served Trak Tech, Inc., c/o Marjorie R. Kohls, in Chicago, Illinois. On August 21, 2006, Trak Tech, Inc., through Marjorie Kohls, filed a motion to dismiss, stating that Trak Tech, Inc., was an Illinois corporation from approximately 1990 to 2005 that provided computer drafting services but that it was never involved in the railroad business. On September 25, 2006, Plaintiff responded that he appeared to serve the wrong party and that he had initiated steps to serve Trak Tech, Inc., in Calverton, Kentucky.

On October 12, 2006, the Court entered an order construing Trak Tech, Inc.'s motion as seeking summary judgment under Federal Rule of Civil Procedure 56 and granting Plaintiff until November 2<sup>nd</sup> to file a response to what appears to be a complete defense. On October 30, 2006,

Attorney Michael B. Hunter entered his appearance on behalf of the newly-served and now properly named party, Track Tech, Inc. On October 31<sup>st</sup>, Plaintiff filed a motion to amend his complaint by interlineation to substitute the name of Track Tech, Inc., for the improperly named and served party Trak Tech, Inc. On November 3<sup>rd</sup>, Track Tech, Inc., filed an answer to the complaint.

Plaintiff's motion to amend by interlineation (Doc. 37) is **GRANTED**, and Track Tech, Inc., is substituted for the improperly named party, Trak Tech, Inc. The motion to dismiss filed by Trak Tech, Inc. (Doc. 15), which is construed as a motion for summary judgment, is **GRANTED**, and Trak Tech, Inc., is **DISMISSED with prejudice** from this action. That entity was wrongly named and served, and its defense is the civil analogue to actual innocence. The Clerk of Court is **DIRECTED** to mail a copy of this Order to Trak Tech, Inc., c/o Marjorie R. Kohls, 939 West Huron #101, Chicago, Illinois 60622.

**IT IS SO ORDERED.**

DATED: 11/16/06

s/ G. Patrick Murphy

G. PATRICK MURPHY

Chief United States District Judge